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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 RENEE E.,¹

11 Plaintiff,

12 v.

13 ANDREW SAUL,² Commissioner
14 of Social Security Administration,

15 Defendant.

16 Case No. 8:19-cv-00362-JC

17 MEMORANDUM OPINION

18 **I. SUMMARY**

19 On February 25, 2019, plaintiff Renee E. filed a Complaint seeking review
20 of the Commissioner of Social Security's denial of plaintiff's applications for
21 benefits. The parties have consented to proceed before the undersigned United
22 States Magistrate Judge.

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24 ¹Plaintiff's name is partially redacted to protect her privacy in compliance with Federal
25 Rule of Civil Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court
26 Administration and Case Management of the Judicial Conference of the United States.

27 ²Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Commissioner Andrew
28 Saul is hereby substituted for Acting Commissioner Nancy A. Berryhill as the defendant in this
action.

1 This matter is before the Court on the parties' cross motions for summary
2 judgment, respectively ("Plaintiff's Motion") and ("Defendant's Motion")
3 (collectively "Motions"). The Court has taken the Motions under submission
4 without oral argument. See Fed. R. Civ. P. 78; L.R. 7-15; March 5, 2019 Case
5 Management Order ¶ 5.

6 Based on the record as a whole and the applicable law, the decision of the
7 Commissioner is AFFIRMED. The findings of the Administrative Law Judge
8 ("ALJ") are supported by substantial evidence and are free from material error.

9 **II. BACKGROUND AND SUMMARY OF ADMINISTRATIVE
10 DECISION**

11 On March 25, 2014 and February 27, 2015, respectively, plaintiff filed
12 applications for Supplemental Security Income and Disability Insurance Benefits,
13 alleging disability beginning on May 1, 2012 due to fibromyalgia, postherpetic
14 neuralgia, severe depression, and chronic fatigue. (Administrative Record ("AR")
15 176-86, 231). She subsequently alleged that in 2015, the pain in her back and
16 neck and her depression were worse. (AR 270). The ALJ examined the medical
17 record and heard testimony from plaintiff (who was represented by counsel) and a
18 vocational expert. (AR 32-57).

19 On December 4, 2017, the ALJ determined that plaintiff was not disabled
20 through the date of the decision. (AR 18-27). Specifically, the ALJ found:
21 (1) plaintiff suffered from the following severe impairments: fibromyalgia
22 syndrome, postherpetic polyneuropathy, cervical spine degenerative disc disease,
23 and migraine headaches (AR 20); (2) plaintiff's impairments, considered
24 individually or in combination, did not meet or medically equal a listed
25 impairment (AR 22-23); (3) plaintiff retained the residual functional capacity to
26 perform light work (20 C.F.R. §§ 404.1567(b) and 416.967(b)) with additional
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1 limitations³ (AR 23); (4) plaintiff could perform past relevant work as a sales
2 associate and party sales (AR 26-27); and (5) plaintiff's statements regarding the
3 intensity, persistence, and limiting effects of her subjective symptoms were not
4 entirely consistent with the medical evidence and other evidence in the record (AR
5 24-26).

6 On December 26, 2018, the Appeals Council denied plaintiff's application
7 for review. (AR 1-6).

8 **III. APPLICABLE LEGAL STANDARDS**

9 **A. Administrative Evaluation of Disability Claims**

10 To qualify for disability benefits, a claimant must show that she is unable
11 "to engage in any substantial gainful activity by reason of any medically
12 determinable physical or mental impairment which can be expected to result in
13 death or which has lasted or can be expected to last for a continuous period of not
14 less than 12 months." Molina v. Astrue, 674 F.3d 1104, 1110 (9th Cir. 2012)
15 (quoting 42 U.S.C. § 423(d)(1)(A)) (internal quotation marks omitted); 20 C.F.R.
16 §§ 404.1505(a) 416.905. To be considered disabled, a claimant must have an
17 impairment of such severity that she is incapable of performing work the claimant
18 previously performed ("past relevant work") as well as any other "work which
19 exists in the national economy." Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir.
20 1999) (citing 42 U.S.C. § 423(d)).

21 To assess whether a claimant is disabled, an ALJ is required to use the five-
22 step sequential evaluation process set forth in Social Security regulations. See
23 Stout v. Commissioner, Social Security Administration, 454 F.3d 1050, 1052 (9th
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25 ³The ALJ determined that plaintiff (i) could lift and carry 20 pounds occasionally and ten
26 pounds frequently; (ii) could stand and walk six out of eight hours a day; (iii) could sit six out of
27 eight hours a day; (iv) could occasionally climb ramps, stairs, ladders, ropes, or scaffolds;
28 (v) could occasionally balance, stoop, kneel, crouch, or crawl; (vi) would need to avoid
concentrated exposure to extreme cold or heat; and (vii) would need to avoid concentrated
exposure to hazards. (AR 23).

1 Cir. 2006) (describing five-step sequential evaluation process) (citing 20 C.F.R. §§
2 404.1520, 416.920). The claimant has the burden of proof at steps one through
3 four – *i.e.*, determination of whether the claimant was engaging in substantial
4 gainful activity (step 1), has a sufficiently severe impairment (step 2), has an
5 impairment or combination of impairments that meets or medically equals one of
6 the conditions listed in 20 C.F.R. Part 404, Subpart P, Appendix 1 (“Listings”)
7 (step 3), and retains the residual functional capacity to perform past relevant work
8 (step 4). Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005) (citation omitted).
9 The Commissioner has the burden of proof at step five – *i.e.*, establishing that the
10 claimant could perform other work in the national economy. Id.

11 **B. Federal Court Review of Social Security Disability Decisions**

12 A federal court may set aside a denial of benefits only when the
13 Commissioner’s “final decision” was “based on legal error or not supported by
14 substantial evidence in the record.” 42 U.S.C. § 405(g); Trevizo v. Berryhill, 871
15 F.3d 664, 674 (9th Cir. 2017) (citation and quotation marks omitted). The
16 standard of review in disability cases is “highly deferential.” Rounds v.
17 Commissioner of Social Security Administration, 807 F.3d 996, 1002 (9th Cir.
18 2015) (citation and quotation marks omitted). Thus, an ALJ’s decision must be
19 upheld if the evidence could reasonably support either affirming or reversing the
20 decision. Trevizo, 871 F.3d at 674-75 (citations omitted). Even when an ALJ’s
21 decision contains error, it must be affirmed if the error was harmless. See
22 Treichler v. Commissioner of Social Security Administration, 775 F.3d 1090,
23 1099 (9th Cir. 2014) (ALJ error harmless if (1) inconsequential to the ultimate
24 nondisability determination; or (2) ALJ’s path may reasonably be discerned
25 despite the error) (citation and quotation marks omitted).

26 Substantial evidence is “such relevant evidence as a reasonable mind might
27 accept as adequate to support a conclusion.” Trevizo, 871 F.3d at 674 (defining
28 “substantial evidence” as “more than a mere scintilla, but less than a

1 preponderance") (citation and quotation marks omitted). When determining
2 whether substantial evidence supports an ALJ's finding, a court "must consider the
3 entire record as a whole, weighing both the evidence that supports and the
4 evidence that detracts from the Commissioner's conclusion[.]" Garrison v.
5 Colvin, 759 F.3d 995, 1009 (9th Cir. 2014) (citation and quotation marks omitted).

6 Federal courts review only the reasoning the ALJ provided, and may not
7 affirm the ALJ's decision "on a ground upon which [the ALJ] did not rely."
8 Trevizo, 871 F.3d at 675 (citations omitted). Hence, while an ALJ's decision need
9 not be drafted with "ideal clarity," it must, at a minimum, set forth the ALJ's
10 reasoning "in a way that allows for meaningful review." Brown-Hunter v. Colvin,
11 806 F.3d 487, 492 (9th Cir. 2015) (citing Treichler, 775 F.3d at 1099).

12 A reviewing court may not conclude that an error was harmless based on
13 independent findings gleaned from the administrative record. Brown-Hunter, 806
14 F.3d at 492 (citations omitted). When a reviewing court cannot confidently
15 conclude that an error was harmless, a remand for additional investigation or
16 explanation is generally appropriate. See Marsh v. Colvin, 792 F.3d 1170, 1173
17 (9th Cir. 2015) (citations omitted).

18 IV. DISCUSSION

19 Plaintiff contends that a reversal or remand is warranted because the ALJ
20 failed to provide legally sufficient reasons for rejecting plaintiff's subjective
21 complaints. (Plaintiff's Motion at 13-19). The Court disagrees.

22 A. Pertinent Law

23 When determining disability, an ALJ is required to consider a claimant's
24 impairment-related pain and other subjective symptoms at each step of the
25 sequential evaluation process. 20 C.F.R. §§ 404.1529(a) & (d), 416.929(a) & (d).
26 Accordingly, when a claimant presents "objective medical evidence of an
27 underlying impairment which might reasonably produce the pain or other
28 symptoms [the claimant] alleged," the ALJ is required to determine the extent to

1 which the claimant's statements regarding the intensity, persistence, and limiting
2 effects of his subjective symptoms ("subjective statements" or "subjective
3 complaints") are consistent with the record evidence as a whole and, consequently,
4 whether any of the individual's symptom-related functional limitations and
5 restrictions are likely to reduce the claimant's capacity to perform work-related
6 activities. 20 C.F.R. §§ 404.1529(a), (c)(4), 416.929(a), (c)(4); Social Security
7 Ruling ("SSR") 16-3p, 2017 WL 5180304, at *4-*10. When an individual's
8 subjective statements are inconsistent with other evidence in the record, an ALJ
9 may give less weight to such statements and, in turn, find that the individual's
10 symptoms are less likely to reduce the claimant's capacity to perform work-related
11 activities. See SSR 16-3p, 2017 WL 5180304, at *8. In such cases, when there is
12 no affirmative finding of malingering, an ALJ may "reject" or give less weight to
13 the individual's subjective statements "only by providing specific, clear, and
14 convincing reasons for doing so." Brown-Hunter, 806 F.3d at 488-89. This
15 requirement is very difficult to satisfy. See Trevizo, 871 F.3d at 678 ("The clear
16 and convincing standard is the most demanding required in Social Security
17 cases.") (citation and quotation marks omitted).

18 An ALJ's decision "must contain specific reasons" supported by substantial
19 evidence in the record for giving less weight to a claimant's statements. SSR
20 16-3p, 2017 WL 5180304, at *10. An ALJ must clearly identify each statement
21 being rejected and the particular evidence in the record which purportedly
22 undermines the statement. Treichler, 775 F.3d at 1103 ("ALJs typically identify
23 what parts of the claimant's testimony were not credible and why.") (citation
24 omitted). Nonetheless, if an ALJ's evaluation of a claimant's statements is
25 supported by substantial evidence, "the court may not engage in second-guessing."
26 Chaudhry v. Astrue, 688 F.3d 661, 672 (9th Cir. 2012) (citation omitted).

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1 **B. Analysis**

2 Plaintiff alleged that due to her fibromyalgia, postherpetic neuralgia, severe
3 depression, and chronic fatigue, she spends most of her time in bed. (AR 42). She
4 can occasionally drive and fix meals, but she is aided by her mother and two
5 helpers who live with plaintiff and her children. (AR 42). She sometimes goes
6 three days without showering or taking care of personal hygiene. (AR 42). She
7 can walk for 15 minutes to half an hour a couple times a month. (AR 43). She has
8 memory and concentration problems due to fatigue and depression. (AR 48, 53-
9 54). Sometimes social activities are overwhelming, and she has trouble getting
10 along with others. (AR 251-52). She has tried numerous treatment modalities, but
11 they only provided minimal relief. (AR 44).

12 First, the ALJ gave less weight to plaintiff's subjective complaints due, in
13 part, to the absence of supporting objective medical evidence. (AR 24-25). This
14 is a proper factor to consider when evaluating a claimant's subjective complaints.
15 See Burch, 400 F.3d at 681 ("Although lack of medical evidence cannot form the
16 sole basis for discounting pain testimony, it is a factor that the ALJ can consider
17"). For example, the ALJ found no supporting objective evidence of cervical
18 radiculopathy; extreme limitation in the ability to stand, balance or use her hands;
19 or marked limitation in physical functioning, as alleged. (AR 23). The ALJ noted
20 that the evidence of normal motor strength, intact sensation, and normal muscle
21 bulk and muscle tone was inconsistent with plaintiff's allegations of lying in bed
22 most of the day due to her impairments and pain. (AR 23, 25-26); see also Meanel
23 v. Apfel, 172 F.3d 1111, 1114 (9th Cir. 1999) (ALJ properly discredited plaintiff's
24 testimony where there was no evidence of muscular atrophy or other physical
25 signs usually seen in an "inactive, totally incapacitated individual.").

26 Plaintiff argues that physical signs are not among the criteria for diagnosing
27 fibromyalgia or polyneuropathy. (Plaintiff's Motion at 17). Here, however, the
28 ALJ did not rely on the lack of objective signs of fibromyalgia or polyneuropathy

1 to determine whether plaintiff had the medically determinable impairments of
2 fibromyalgia or polyneuropathy – both of which the ALJ determined were severe
3 impairments – but rather to evaluate plaintiff's allegations of significant inactivity
4 caused by these impairments. (AR 23, 25-26). This was proper. See Meanel, 712
5 F.3d at 1114.

6 The ALJ also found a lack of supporting objective evidence regarding
7 plaintiff's depressive disorder and its effects on plaintiff's ability to function. (AR
8 21-22). The ALJ noted that plaintiff was able to occasionally drive and take her
9 young children to school activities, manage her treatment regimen, and engage in
10 social activities with friends and take in boarders to assist her with the household.
11 (AR 21-22, 42-43, 242, 251). The ALJ also noted that plaintiff was able to testify
12 at the hearing with little evidence of difficulty remembering her detailed medical
13 history, interact with the ALJ and hearing office staff without difficulties in her
14 interpersonal skills, and sustain attention and concentration during the hearing
15 without any noted difficulties. (AR 21-22). The ALJ was permitted to rely on her
16 own observations of plaintiff as one of the several factors for evaluating plaintiff's
17 symptom testimony. See SSR 16-3p, 2016 WL 1119029, at *7 (ALJ "will
18 consider any personal observations of the [claimant] in terms of how consistent
19 those observations are with the individual's statements about his or her symptoms
20 as well as with all of the evidence in the file."); see also Verduzco v. Apfel, 188
21 F.3d 1087, 1090 (9th Cir. 1999) (when evaluating symptom testimony ALJ may
22 consider observations that claimant acted in manner at hearing that was
23 inconsistent with alleged disabling symptoms) (citation omitted).

24 Second, the ALJ considered other evidence in the record – State agency
25 opinions – in giving less weight to plaintiff's subjective complaints. (AR 25-26).
26 The ALJ noted that there were no treating or examining source opinions in the
27 record, and thus there were no opinions that contradicted the State agency medical
28 consultants' opinions that plaintiff had the capacity for light work with occasional

1 posturals and no concentrated exposure to extreme cold, extreme heat, and
2 hazards. (AR 25, 58-80, 83-106). The State agency medical consultants relied on
3 plaintiff's essentially normal physical examinations and the lack of evidence that
4 plaintiff's diagnosis was established in a systematic fashion according to
5 established criteria. (AR 62, 86). Regarding plaintiff's alleged mental
6 impairments, the State agency psychiatric consultant on initial review opined that
7 the mental impairments were non-severe, noting that plaintiff's mental status
8 examinations were normal with treatment. (AR 25, 63, 74). On reconsideration,
9 the State agency psychological consultant noted that no worsening of the severity
10 of plaintiff's mental impairments was evident in the evidence received subsequent
11 to the initial determination, yet opined that plaintiff had a severe mental
12 impairment and could perform simple and detailed but not complex activities and
13 that she may benefit from reduced interactions with the public. (AR 26, 86, 90-92,
14 98). The ALJ gave less weight to the opinion on reconsideration, finding that
15 plaintiff's mental complaints were secondary to her physical pain symptoms and
16 the reported worsening of her symptoms was not supported by the record as a
17 whole. (AR 26).

18 Plaintiff argues that she had "multiple psychiatric hospitalizations involving
19 interaction between psychological and physical symptoms that neither of the
20 medical doctors nor the psychologists assumed." (Plaintiff's Motion at 17). The
21 record shows that plaintiff was hospitalized approximately 20-25 years ago for a
22 suicide attempt (AR 1747), in May 2015 for a severe reaction to an injection in her
23 head for fibromyalgia (AR 45, 1885-2048), and in December 2015 for suicidal
24 ideation (AR 46-47, 1301-1607). Thus, unless plaintiff is counting the
25 hospitalization over a decade prior to the alleged onset date, the record does not
26 support plaintiff's argument that she had multiple psychiatric hospitalizations.
27 While Plaintiff argues that the medical evidence supports the State agency
28 psychological consultant's opinion (Plaintiff's Motion at 17), this Court will not

1 second-guess the ALJ's reasonable determination to the contrary, even if the
2 evidence could give rise to inferences more favorable to plaintiff. See Chaudhry,
3 688 F.3d at 672 (citation omitted).

4 Third, the ALJ gave less weight to plaintiff's subjective complaints because
5 she stopped working for reasons other than her condition, namely because she was
6 laid off. (AR 25). This is a proper factor to consider when assessing a claimant's
7 subjective complaints. See Brackett v. Commissioner of Social Security
8 Administration, 468 F. App'x 754, 755 (9th Cir. 2012) (ALJ permissibly
9 discounted claimant's subjective pain testimony partly because claimant stopped
10 working when he was laid off); Bruton v. Massanari, 268 F.3d 824, 828 (9th Cir.
11 2001) (ALJ did not err in discrediting claimant's subjective complaints where
12 claimant left his job because he was laid off). Courts have found, however, that
13 being laid off prior to the alleged disability onset date does not weigh against a
14 claimant's credibility. See Haagenson v. Colvin, 656 F. App'x 800, 801 (9th Cir.
15 2016) (holding that "the evidence that [claimant] was laid off from her last job . . .
16 – prior to her alleged onset date . . . – has no bearing on either her credibility or
17 the disability determination"); Harbaugh v. Commissioner of Social Security
18 Administration, 2018 WL 1472005, at *4 (D. Ariz. Mar. 26, 2018) (finding "the
19 fact that [claimant] was laid off . . . three years before her alleged onset date" "has
20 no relevance to [claimant's] credibility in this instance"). Here, as the ALJ noted,
21 plaintiff alleged that she stopped working in 2010 because she was laid off due to
22 lack of business.⁴ (AR 25, 231). Because plaintiff's alleged onset date is two
23 years after the date plaintiff was laid off, the Court finds that this is not a clear and
24 convincing reason for rejecting plaintiff's subjective complaints.

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27 ⁴Despite alleging in the Disability Report that she was laid off due to lack of business,
28 plaintiff testified that she stopped working in 2010 because she was "in considerable pain and
started doing more medical care to see if [she] could get better." (AR 40).

1 Fourth, the ALJ observed that, contrary to plaintiff's alleged mental
2 impairments due to her pain, plaintiff's presentation at the hearing did not support
3 plaintiff's allegations. (AR 21-22). As discussed above, the ALJ was permitted to
4 rely on her own observations of plaintiff at the hearing as one of several factors
5 affecting plaintiff's credibility. See Drouin v. Sullivan, 966 F.2d 1255, 1259 (9th
6 Cir. 1992) (upholding credibility rejection where ALJ's observation of claimant at
7 the hearing was one of several legitimate reasons stated); see also Verduzco, 188
8 F.3d at 1090.

On the whole, three of the four reasons for discounting plaintiff's subjective complaints are valid and supported by substantial evidence. The ALJ's error in relying on plaintiff's lay-off in 2010 is harmless, as it would not have negated the validity of the ALJ's ultimate evaluation of plaintiff's statements in this case. See Molina, 674 F.3d at 1115 (Where one or more reasons supporting an ALJ's credibility analysis is invalid, any error is harmless if (1) the ALJ provided other valid reasons supported by the record; (2) "there remains substantial evidence supporting the ALJ's decision"; and (3) the error "does not negate the validity of the ALJ's ultimate [credibility] conclusion.") (citations and internal quotation marks omitted).

19 Accordingly, plaintiff is not entitled to a reversal or remand on this basis.

V. CONCLUSION

21 For the foregoing reasons, the decision of the Commissioner of Social
22 Security is AFFIRMED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

25 || DATED: December 18, 2019

/s/

Honorable Jacqueline Chooljian
UNITED STATES MAGISTRATE JUDGE